



City of San Leandro

Meeting Date: November 17, 2014

Staff Report

File Number: 14-484

Agenda Section: PUBLIC HEARINGS

Agenda Number: 4.A.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for an Urgency Ordinance Extending a Temporary Moratorium on the Establishment or Relocation of New and Existing Massage Establishments for a Period of Ten Months and Fifteen Days, to Become Effective Immediately

RECOMMENDATIONS

Staff recommends that the City Council adopt the interim urgency ordinance extending a temporary moratorium on the issuance of business licenses on new massage establishments or the relocation of existing massage establishments. The moratorium, as extended, will only prohibit new massage establishments and the relocation of existing establishments to the extent permitted by State law. The moratorium will be extended for a period of ten (10) months and fifteen (15) days, to become effective immediately.

BACKGROUND AND SUMMARY

On October 20, 2014, the City Council adopted urgency Ordinance 2014-019 establishing a 45-day moratorium on the establishment or relocation of new and existing massage establishments. The temporary moratorium became effective immediately and will expire by its own terms on December 4, 2014 unless extended. Following notice and a public hearing, the City Council may extend the moratorium ordinance for ten (10) months and fifteen (15) days. The extension request was noticed as required.

As noted in the October 20, 2014 staff report on the adoption of the temporary moratorium ordinance, cities have traditionally had local control over local zoning and land use authority related to massage establishments. In 2009, the California Legislature adopted Senate Bill 731, which added the Massage Therapy Act to state law. The Massage Therapy Act effectively eliminated local zoning authority over massage establishments and limited San Leandro's ability to regulate massage establishments related to business licensing, zoning, and promotion of public health, safety, and welfare.

Prior to the effective date of the Massage Therapy Act, San Leandro had 11 establishments. After the passage of the Massage Therapy Act in 2009 the number of establishments in the City that provide massage is 30. The noticeable increase in establishments is similar to other cities in Alameda County. Cities throughout California have received numerous complaints regarding illicit activity, including prostitution, at massage establishments. In San Leandro one massage establishment, with a history of multiple offenses for prostitution since 2011, was recently shut down as part of a county-wide sting operation.

The Governor recently signed Assembly Bill 1147, which is effective January 1, 2015. Assembly Bill 1147 will amend the California Business and Professions Code to return land use authority over all massage establishments to cities.

Currently, as applications for business licenses for massage establishments are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance. Absent the adoption of this interim urgency ordinance, it is likely that the establishment and operation of massage establishments in locations within the City, without appropriate controls in place to regulate the impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City.

This moratorium will allow the City Council to (1) address community concerns regarding the establishment and operation of all massage establishments, (2) study the potential impacts massage establishments may have on residents' public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for massage establishments, (4) study and determine the appropriate zoning and location for massage establishments, and (5) determine appropriate controls for protection of public health and welfare.

With the return of local land use authority pursuant to Assembly Bill 1147, staff will continue its study of the potential impacts of massage establishments, and possible amendments to the City's Municipal and Zoning Codes for clear, consistent and uniform regulations related to the establishment, location and operation of massage establishments.

Staff recommends that the City Council extend the previously adopted moratorium on the establishment or relocation of massage establishments to provide time to study and plan an approach to massage regulation following the Governor's approval of Assembly Bill 1147.

Pursuant to Government Code section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. The City may adopt or extend a moratorium on an urgency basis provided that the City finds that there exists a threat to the public health, safety and welfare.

Staff and the City Attorney have prepared the attached urgency ordinance for the City Council's consideration. As described in more detail below, this urgency ordinance would extend a temporary moratorium on the issuance of business licenses for massage establishments and the relocation of existing massage establishments. The moratorium would not prohibit:

1. The renewal of a business license for an existing massage establishment that seeks to maintain the massage establishment in its current location, in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; and
2. Persons engaged as: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited high schools, junior colleges, colleges or universities, and (d) trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and working in conjunction with a specific athletic event.
3. The issuance of a business license to or relocation of, a California Massage Therapy Council certified massage establishment until AB 1147 takes effect on January 1, 2015.

Government Code Section 65858(d) states: "Ten days prior to the expiration of an interim ordinance or any extension, [the City Council] shall issue a written report describing the measures taken to alleviate the conditions which led to the adoption of the ordinance." Pursuant to this provision the City Council hereby reports that, due to the pending changes in state law that amend the Business and Professions Code to return land use authority over massage establishments to cities relative to the location and operation of massage establishments, the extension of the interim ordinance for an additional ten months and fifteen days pursuant to Government Code Section 65858 is necessary to ensure that contemplated amendments to the City's Municipal Code are legally adequate and can be found to be necessary to protect the health, safety and welfare of the community. In anticipation of the grant of land use and operational regulatory authority to cities, staff has commenced the preparation of amendments to the Municipal Code and Zoning Code consistent with the forthcoming changes in state law. As noted above, changes in state law do not take effect until January 1, 2015, and the City will not regain land use and operational regulatory authority until that time.

If a massage establishment was approved in the City, prior to the City having an opportunity to study and adopt massage establishment regulations, it could create conflicts among land uses, or conflict with the City's long-term planning goals. Also, multiple jurisdictions have seen a proliferation of massage establishments and criminal activity at these locations. Accordingly, establishment or relocation of massage establishments in the City at this time, before the City can adopt regulations or determine how best to address potential secondary effects of these types of uses presents a current and immediate threat to the public health, safety, and welfare. Therefore, staff and the City Attorney recommend adoption of the urgency ordinance in order to avoid this current and immediate threat to the public health, safety, and welfare, which could occur if parties seeking to evade the adoption of regulations were permitted to obtain approval for uses that might defeat the ultimate objective of the adoption of regulations.

In order to ensure that the City's zoning provisions are adequate and that massage establishments will be located and regulated in a manner that protects the public and satisfies

the policies, goals and objectives of the General Plan, staff and the City Attorney recommend that the City Council direct staff to study and provide recommendations to the City Council on what Municipal or Zoning Code amendments and regulations are necessary in order to protect against any potential primary and secondary impacts of massage establishments on the community.

This Ordinance would approve a ten (10) month and fifteen (15) day extension of the temporary moratorium on the establishment or relocation of new and existing massage establishments in the City upon a 4/5 vote of the Council. The moratorium may be further extended for an additional year. However, it is anticipated that staff will prepare necessary changes to the Municipal Code and Zoning Code before the end of the ten (10) month and fifteen (15) day extension of this ordinance. In conjunction with the adoption of necessary changes to the Municipal Code and Zoning Code, staff will recommend that the City Council terminate this moratorium early. This moratorium is needed in order to conduct a study on how best to address the potential threats to public safety, health and welfare resulting from massage establishments in light of pending changes in state law that will reestablish local control over massage establishments. The act of extending the moratorium is not a review or determination on the merits of allowing such uses or not; instead, it will allow the City time to study the issue.

PREPARED BY: Richard D. Pio Roda, City Attorney, City Attorney's Office

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City of San Leandro

Meeting Date: November 17, 2014

Urgency Ordinance

File Number: 14-485

Agenda Section: PUBLIC HEARINGS

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: URGENCY ORDINANCE Extending a Temporary Moratorium on the Establishment or Relocation of New and Existing Massage Establishments for a Period of Ten Months and Fifteen Days, to Become Effective Immediately (extends moratorium established by Ordinance No. 2014-019 on the issuance of business licenses for massage establishments for a total of one year)

WHEREAS, on October 20, 2014, the City Council adopted Ordinance No. 2014-019 imposing a temporary moratorium on the establishment or relocation of new and existing massage establishments for a period of 45 days, which moratorium will expire on December 4, 2014 unless extended; and

WHEREAS, Government Code section 65858 authorizes an extension of a moratorium ordinance, after a noticed public hearing, to prohibit uses of land which may conflict with a contemplated general plan, specific plan or zoning proposal which the legislative body, planning commission or the planning department is considering or studying or intends to study within a reasonable period of time; and

WHEREAS, the City of San Leandro has an interest in planning and regulating the use of property within the City. Implicit in any plan or regulation is the City's interest in maintaining the quality of urban life and the character of the City's neighborhoods. Without stable, well-planned neighborhoods, sections of the City can quickly deteriorate, with tragic consequences to social, environmental, and economic values; and

WHEREAS, cities have traditionally had a high degree of local control related to local zoning and land use authority over massage establishments; and

WHEREAS, the California Legislature adopted Senate Bill 731, effective July 1, 2009, adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy ("Massage Therapy Act"); and

WHEREAS, the Massage Therapy Act placed substantial limits on cities' regulation of massage establishments as it relates to business licensing, zoning, and health, safety, and welfare regulation; and

WHEREAS, in 2009, San Leandro had 11 establishments that provide massage and now has 30 establishments that provide massage; and

WHEREAS, cities throughout California have received numerous complaints regarding illicit activity, including prostitution, at massage establishments. In San Leandro one massage establishment, with a history of multiple offenses for prostitution since 2011, was recently shut down as part of a county-wide sting operation; and

WHEREAS, San Leandro, consistent with the Massage Therapy Act, has no existing zoning regulations that address the location of California Massage Therapy Council ("CAMTC") certified massage establishments near potentially sensitive areas throughout the City; and

WHEREAS, the California Legislature recently passed and the Governor signed Assembly Bill 1147 to become effective January 1, 2015, amending Section 460 of, and adding and repealing Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, and amending Section 51034 of the Government Code; and

WHEREAS, Assembly Bill 1147 will return land use authority over massage establishments to cities; and

WHEREAS, as applications for business licenses and massage permits are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance and unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and

WHEREAS, as reflected in the findings for Ordinance No. 2014-019 and the findings herein, there is a current and immediate threat to the public health, safety and welfare of the community if massage establishments locate in the City without proper regulations in place. Absent the adoption of this urgency ordinance to extend Ordinance No. 2014-019, it is likely that the establishment and operation of massage establishments in locations within the City, without appropriate controls in place to regulate the impacts on the community, will result in harmful effects to the businesses, property owners and residents of the City; and

WHEREAS, Article XI, Section 7 of the California Constitution provides that a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, California Government Code Section 65858, subdivision (a) provides that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45

days from the date of adoption, and may be extended a maximum of two times and have a maximum total duration of 2 years; and

WHEREAS, California Government Code Section 65858, subdivision (c) provides that legislative bodies may not adopt or extend such interim ordinances unless they contain findings that there is a current and immediate threat to the public health, safety, and welfare, and that the approval of additional entitlements would result in that threat to the public health, safety and welfare; and

WHEREAS, the City Council desires to (1) address the community concerns regarding the establishment and operation of massage establishments, (2) study the potential impacts massage establishments may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for massage establishments, (4) study and determine the appropriate zoning and location for massage establishments, and (5) determine appropriate controls for protection of public health and welfare; and

WHEREAS, in accordance with California Government Code Section 65858, subdivision (c), which provides that such interim ordinances that have the effect of denying approvals needed for the development of projects with a significant component of multifamily housing (as defined in California Government Code Section 65858, subdivisions (g) and (h)) may not be extended except upon written findings adopted by the legislative body as specified in the subdivision, the City Council hereby finds that the moratorium extended pursuant to this Ordinance will not have the effect of denying approvals needed for the development of projects with a significant component of multi-family housing; and that, therefore, the findings specified in Section 65858, subdivision (c), need not be made; and

WHEREAS, consistent with the return of local land use authority pursuant to Assembly Bill 1147, staff shall commence steps to conduct a study of the potential impacts of massage establishments, and possible amendments to the City's Municipal Code and Zoning Code for clear, consistent and uniform regulations related to the establishment, location and operation of such businesses; and

WHEREAS, the City will take steps to update its Municipal Code and Zoning Code to ensure the City's laws are consistent with the goals, policies and standards of the General Plan and the goals of the City Council to protect the public health, safety, and welfare; and

WHEREAS, the City will consider other existing and potential land uses within the City to assure a degree of compatibility between the location of massage practice and surrounding properties, and study revisions to the Zoning Code; and

WHEREAS, the City seeks a moratorium on establishment or relocation of massage establishments to provide the City time to study and plan its approach to massage regulation following the Governor's approval of Assembly Bill 1147; and

WHEREAS, pursuant to Section 15001 of the California Environmental Quality Act (CEQA) Guidelines, this ordinance is exempt from CEQA based on the following:

(1) This ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.

(2) This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.

(3) This ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2), above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

NOW, THEREFORE, the City Council of the City of San Leandro does **ORDAIN** as follows:

Section 1. Recitals Made Findings. The above recitals are hereby declared to be true and correct and findings of the City Council of the City of San Leandro.

Section 2. Moratorium Extended.

A. Scope. In accordance with the authority granted the City of San Leandro under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, the moratorium imposed by Ordinance No. 2014-019, which prohibits the establishment or relocation of new or existing massage establishments in the City of San Leandro, shall hereby be extended for a period of ten (10) months and fifteen (15) days from and after the date that Ordinance No. 2014-019 would have otherwise expired, and no person, partnership, corporation, or other entity shall commence doing business as, or operations of, a massage establishment, nor shall a message establishment operator permit or business license be issued to a massage establishment owner unless specifically excluded herein.

B. Exceptions. This moratorium as extended shall not prohibit the following: 1) the renewal of a business license for an existing massage establishment provided that the renewal seeks to maintain the massage establishment in its current location, and the massage establishment is operating in a manner, and housed within a building, which complies with all City, State, Federal or otherwise applicable, codes, rules, regulations or laws; 2) persons engaged as follows: (a) physicians, surgeons, chiropractors, osteopaths, nurses, physical therapists, or acupuncturists who are duly licensed to practice within the scope of their licenses; (b) employed at hospitals, nursing homes, sanitariums, or any other health facility licensed by the state; (c) coaches or trainers acting within the scope of their employment at accredited high schools, junior colleges, colleges or universities, and (d) trainers of amateur, semi-professional or professional athletes or athletic teams while engaged in their training responsibilities for and with athletes, and trainers working in conjunction with a specific athletic event; and 3) the issuance of a business license to, or relocation of, a CAMTC certified massage establishment until AB 1147 takes effect on January 1, 2015.

C. Statutory Findings and Purpose. This extension ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This Ordinance is deemed necessary based on the findings of the City Council as set forth in the recitals incorporated by Section 1 of this Ordinance, and the additional information set forth below:

1. The purpose of this Ordinance is to protect the public safety, health and welfare from a current and immediate threat posed by the establishment or relocation of new and existing massage establishments within the City of San Leandro, in light of the recent passage of Assembly Bill 1147 which reinstates significant local control over massage establishments to local jurisdictions, until such reasonable time as a detailed study of the possible adverse impacts such establishments might have on commercial and residential uses and the general public health, safety, and welfare. The facts constituting the urgency are: a) the City currently has 30 establishments that provide massage and only had 11 establishments prior to the passage of Senate Bill 731, which deprived cities of local control over massage establishments; b) Cities throughout California, including San Leandro, have received complaints regarding illicit activity occurring at massage establishments; c) there are no existing regulations within the City of San Leandro that address the location of California Massage Therapy Council ("CAMTC") certified massage establishments, and massage operations, which are near potentially sensitive areas throughout the City; d) such locations can be particularly sensitive to potential harmful effects of massage establishments; e) as applications for business licenses are submitted to the City, there is no determination whether the locations of such uses are consistent with the purpose and intent of the City's zoning ordinance; f) unregulated massage establishments conflict with contemplated zoning and with the public health, safety, and welfare; and g) the State Legislature recently passed Assembly Bill 1147, which will become law on January 1, 2015.

2. Absent the adoption of this urgency ordinance, the establishment and operation of massage establishments in the City would result in the harmful secondary effects identified above.

3. It is necessary to study the possible adoption of amendments to the City's municipal code in order to adopt legislation pursuant to the return of local land use control over massage establishments authorized by Assembly Bill 1147.

4. Issuing business licenses or massage establishment operator permits, prior to the completion of the City's study of the potential impact of such facilities, poses a current and immediate threat to the public health, safety, and welfare.

5. In light of the harmful secondary effects associated with massage establishments and the current and immediate threat such secondary effects pose to the public health, safety and welfare, it is necessary, in accordance with Government Code Section 65858, to extend a moratorium on the issuance of entitlements for and the establishment or relocation of massage establishments in the City to provide time for the City Council to further evaluate and consider the possible adoption of legislation, guidelines and/or polices as required to avert the potential impacts of massage establishments.

Section 3. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the

application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of San Leandro hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 4. Effective Date and Duration. This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall extend the moratorium from and after the date that Ordinance No. 2014-019 would have otherwise expired for a period of 10 months and 15 days for a total moratorium period of 1 year in accordance with Government Code section 65858.

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